

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 18th Day of June 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO.12904-12917/97

C/W. W.P.17470-17481/95

BETWEEN:

IN W.P.12904-12917/97

Binny Limited,
Agraharam Road,
Bangalore-23,
rep. by Mr. M. Natarajan,
Senior Officer-Personnel.

IN W.P.17470-17481/95

Binny Limited,
Agraharam Road,
Bangalore-23,
rep. by its
Manager (Personnel & Admin)

(By Sri. K. Kasturi, Adv.)

...PETITIONERS

AND:

1. Assistant Labour Commissioner(C)-II,
and Controlling Authority
for payment of Gratuity,
Crescent Road,
High Grounds,
Bangalore-1.
2. The Tahasildar,
Stoppage of Unauthorised
Constructions,
Bangalore Division IV,
Bangalore,
3. T.E. John,
House No.D1-780,
Binnypet, Bangalore.

4. Subramani,
House No.A-181,
Binnypet,
Bangalore.
5. Sri. Ganeshan,
House No.D-572,
Binnypet,
Bangalore.
6. Sri. Narayan,
House No.D700,
Binnypet,
Bangalore.
7. Sri. Govindaswamy,
House No.A-379,
Binnypet,
Bangalore.
8. Sri. Kannan,
House No.D-542,
Binnypet,
Bangalore.
9. Sri. Rajeswaraiah
House No.D1-850,
Binnypet,
Bangalcre.
10. Sri. Hanumanthappa,
House No.D1-847,
Binnypet,
Bangalore.
11. Sri. Boriah,
House No.D1-672,
Binnypet,
Bangalore.
12. Sri. N. Jagannatha Rao,
House No.240,
Binnypet,
Bangalore.
13. Sri. K.P. Mayan,
House No.D1-778,
Binnypet,
Bangalore.

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14. Sri. Kandaswamy,
House No.D1-853,
Binnypet,
Bangalore.

...RESPONDENTS

(Respondents common in both the petitions)

(By Sri. C. Ramakrishna, HCGP for R-2
in W.P.12904-12917/97,
Sri. C. Ramakrishna, HCGP for R-1 & 2
in W.P.17470-481/95,
Sri. H. Neelakanta Rao, Adv. for
R-3, 9 & 13 in W.P.12904-917/97,
Sri. K.S. Subramanya, Adv. for
R-3, 8,,10 & 14 in W.P.17470-481/95,
Sri. K. Subba Rao, Adv. for R-9
in W.P.17470-481/95)

W.P.No.12904-12917/97 is filed under Article 226 of the Constitution of India, with a prayer to set aside the Notice No. M.S.C.C.R.182/96-97 dt. 18-3-97 at Ann-A issued by the 2nd respondent by issue a writ of Certiorari and etc.,

W.P.No.17470-17481/95 is filed under Article 226 of the Constitution of India, with a prayer to quash Annex-B dt. 10-4-95 and etc.,

These Writ Petitions coming on for preliminary hearing in 'B' Group this day, the Court made the following:-

O R D E R

The dispute raised in this Petition is with regard to payment of gratuity.
The worker claims that the employer was bound to pay gratuity when they left the

the services of the employer. On their failure, the workers made an application under Section 7 of the Payment of Gratuity Act, 1972. The amount of gratuity payable was quantified u/s.7(4) of the Act.

Thereafter under Rule 17 thereof notices were issued to the employer to pay the gratuity quantified. There was a default in the matter of payment of gratuity. Thereupon the petitioner-employer filed W.P.NOS.15152 to 15175/95. When the matter came up, this Court passed the following interim order:-

"Interim stay subject to the condition that the petitioner deposits with the First Respondent a sum of Rs.5,00,000/- on or before 30-06-1995 and another sum of Rs.5,00,000/- on or before 31-08-1995."

As per the order passed by this Court on 25-7-95 the petitioner was called upon to deposit the amount quantified in two

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instalments, that is on 30-6-95 and 31-8-95.

It is submitted by the learned counsel for the petitioner that the amount as payable has been deposited and thereafter the Writ Petition was disposed of on 5th September, 1995, observing that the entire amount due has been paid and the Writ Petition has become infructuous. In doing so, this Court observed thus:

"The relief sought for by the petitioner to quash Annexure-B proceedings whereby steps were initiated to recover the gratuity amount due to the workman. This Court was not inclined to entertain the writ petition. Nevertheless it granted time till 31-8-1995 to discharge the liability. It is represented by the learned counsel for the petitioner that the entire due as per Annexure-B it has been deposited. In view of this submission nothing survives for consideration.

Accordingly, this writ petition is dismissed. The amount

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thus deposited will be disbursed to the workers within four weeks from today."

On the ground that the amount has not been deposited within the prescribed time steps were initiated against the petitioner. The Controlling Officer directed the Recovery Officer to recover the interest as well at the rate of 15%. This proceeding is impugned in these petitions.

2. I have heard Mr. Kasturi, learned counsel for the petitioner and Mr. K. Subba Rao and Mr. K.S. Subramanya, learned counsel for the workers, and Mr. C. . Ramakrishna, learned HCGP.

3. The contention urged by the learned counsel for the petitioner Mr. K. Kasturi, is that there is no power or scope for the Controlling Officer to stipulate any interest. Though the order allegedly passed by the

Controlling Officer adjudicating the claim and prescribing the time frame to make the deposit is not before this Court, it is nevertheless asserted that such an order has been issued prescribing the time. The power of the Controlling Officer is only to quantify the amount and stipulate the period within which the deposit has to be made. He has no power further to add any interest. This point has been considered by the Supreme Court in the case in CHARAN SINGH v. BIRLA TEXTILES AND ANOTHER (1989(1) LLJ 250 wherein at Paragraph-3 their Lordships stated thus:

"There is no provision in the Act for payment of interest and the same was quantified by the Controlling Officer. Section 8 of the Act reads as follows:-

Recovery of Gratuity:- If the amount of gratuity payable under this Act is not paid by the employer,

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within the prescribed time to the person entitled thereto, the Controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a Certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon (at such rate as the Central Government may, by notification, specify), from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto."

Thus it can be seen from Section 8 that question of payment of interest arises only if the payment is not made by the employer within the prescribed time. It is to be noticed that in this case, the Court intervened and passed an order in W.P.Nos. 15152 to 15175/95 to deposit the amount within the prescribed time because the prescribed time was fixed by the Controlling Officer had expired. Therefore, it was again fixed by this Court in accordance with the order passed. Therefore,

all that happened was that at the lapse of
and
prescribed time this Court intervened/granted
some time to pay the amount. As there was
no question of awarding interest, it has
to be paid the moment the time frame for
payment fixed by the Controlling Officer is
not abided. In this view of the matter,
the claim of the Department to recover
interest from the petitioner is
sustainable.

4. Confronted with the situation,
Mr. Kasturi, learned counsel for the petitioners,
submitted that the petitioner may be granted
some time to pay the amount. He submitted
that levy of 15% interest is arbitrary and
illegal. In this case quantification of the
amount was made under Section 7(2). He
submitted that the bank rate would be 12%.
If this is taken note of the demand of
Rs.94,176/- as interest may not be justified.



A proper calculation would show that the amount would be Rs. 75,340/-. The petitioner is willing to pay this amount and deposit the amount awarded. It is agreed that the petitioner would pay the amount to the workers in three equal instalments. The first instalment shall be paid on 1st August, 1998. If there is default then the entire amount as stated in the impugned order of the Recovery Officer shall be recovered.

Writ Petitions are disposed of.

Sd/-
JUDGE



rsk/-

bmv/-